THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION No.13690 OF 2006

ORAL ORDER:

This writ petition is filed questioning the order passed by the respondent dated 31.5.2006, dismissing the application filed by the petitioner under Section 7-A of the Employees' Provident Fund and Miscellaneous Provisions Act, 1952 (for short "the Act").

I have heard the learned counsel for the petitioner and Sri R. N. Reddy, the learned standing counsel, appearing for the respondent.

It is not in dispute that the enquiry under Section 7-A of the Act, was initially fixed to 4.4.2006. However, having received the notice of hearing, the petitioner by letter dated 28.7.2006, informed the respondent that it's authorized representative was hospitalized and the Managing Director was also proceeding to abroad and that he would be returning during the end of April, 2006 and, therefore, the date of hearing may be postponed to the 1st week of May, 2006. The petitioner had also assured that it would produce all the required records during the next hearing. It appears that in spite of the said request made by the petitioner, the enquiry was fixed to 24.4.2006, and the notice of hearing was served on the petitioner on 19.4.2006. The petitioner once gain requested to fix the date of hearing after 1st week of May, 2006. However, the respondent failed to consider the said request of the petitioner and passed an *ex parte* final order on 27.4.2006. In the circumstances, the petitioner filed an application under sub-section (4) of Section 7-A of the Act, to set aside the *ex parte* final order dated 27.4.2006.

In the affidavit filed in support of the writ petition, the Managing Director of the petitioner-company has explained all the reasons stating that non-appearance of the Managing Director on 24.4.2006 was beyond their control. However, by order dated 31.5.2006 dismissed the said application, which runs as follows:

> "The review petition under Section 7-A (4) has already been rejected for the following reason.
>
> 1. The employer was well aware of the date of enquiry and he has also submitted fax message on the final date of hearing for adjourning the enquiry under Section 7 of the E.P.F. & M.P. Act, 1952.
> 2. All the documents on which the assessment has been made were already provided to employer's representative to verify and submit their objections, which has not been received during the enquiry.
>
> Therefore, you are requested to remit the amount."

Having perused the material on record, I find force in the submission of the learned counsel for the petitioner that the impugned order was passed without application of mind to the relevant aspects. At the out set, it is to be noted that the respondent has treated it as a review petition, which can be made under Section 7-B of the Act. In an application filed under sub-section (4) of Section 7-A of the Act, the respondent is required to record a finding that there was no sufficient cause from appearing when the enquiry was held. Obviously, the respondent did not record such a finding, and at any rate, the detailed explanation offered by the petitioner explaining the circumstances under which they could not attend the enquiry have not been considered.

In the circumstances, I am of the opinion that the impugned order, which was passed mechanically, and without application of mind to any of the reasons given by the petitioner, cannot be sustained, and the matter requires reconsideration.

Accordingly, the impugned order is set aside and the writ petition is disposed of with a direction to the respondent to consider the application made by the petitioner under sub-section (4) of Section 7-A of the Act afresh, and pass appropriate orders in accordance with law, within four weeks from the date of receipt of a copy of this order.

The writ petition is accordingly, disposed of. No costs.

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(G. ROHINI, J.)

6th July, 2006.
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THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION No.13690 OF 2006

6th July, 2006.

Between:

M/s SJLT Granites,
Graddagunda (V), Akkampet (P.O.),
Sulurpet (via), P.C. 524121, Nellore district,
represented by its General Manager &
Power of Attorney : P.Venugopal. .. Petitioner.

And

The Assistant Provident Fund Commissioner,
Employees' Provident Funds Organisation,
Sub-Regional Office, 1/30, R.S. Road,
Cuddapah. .. Respondent.